

124 FERC ¶ 61,178
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 22, 2008

In Reply Refer to:

Docket Nos. ER07-459-000
ER07-459-002
ER07-513-000
ER07-513-002
EL07-11-000
EL07-11-002

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Attn: John P. Coyle Esq.

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Dear Messrs. Lorenzo and Coyle:

1. On March 27, 2008, you jointly filed an Offer of Settlement (Settlement) in the above-referenced proceeding on behalf of Vermont Electric Power Company and Vermont Transco, LLC (VT Transco) and the Lamoille County Systems (comprising the five municipal electric systems located in Lamoille County, Vermont, which include: the Town of Stowe Electric Department, the Town of Hardwick Electric Department, the Village of Hyde Park Electric Department, the Village of Johnson Water & Light Department and the Village of Morrisville Water & Light Department). On April 16, 2008, Commission Trial Staff filed timely comments supporting the offer. The Settlement resolves all outstanding issues. On April 30, 2008, the Presiding Judge certified the Settlement as an uncontested settlement.

2. The dispute in this proceeding involves a transmission upgrade by VT Transco and its appropriate classification and cost recovery under the terms of a 1991 agreement between VT Transco's predecessor and 23 Vermont distribution utilities including

Lamoille County Systems (1991 Agreement).¹ The dispute also involves the Settling Parties' ability to withdraw from the 1991 Agreement and the appropriate classification, under the 1991 Agreement, of revenues received from ISO New England for Regional Network Service over pool transmission facilities.²

3. Section 5.1.1 of the Settlement states that the "public interest" standard of review referenced in *Vermont Transco LLC*, 118 FERC ¶ 61,244, at P 51 & n.48 (2007) shall be applied to "any filing at FERC that would have the effect of modifying or replacing the [the 1991 Agreement]" and which does not "have the unanimous consent of all parties to the [1991 Agreement]." In light of *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), the Commission may not accept the standard of review as currently written. As such, the Settlement is approved conditioned on the settling parties revising the standard of review applicable to non-settling third parties. An acceptable substitute provision applicable to non-settling third parties would be the "most stringent standard permissible under applicable law."

4. The Settlement is otherwise fair and reasonable and in the public interest and is hereby conditionally approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. §824e (2006).

5. Because the Settlement specifically "resolves all disputed issues raised in these proceedings,"³ Lamoille County Systems' Motion for Clarification or Limited Reconsideration of Order Granting Effective Dates for Unilateral Contract Modifications is hereby dismissed.

6. The rate schedule sheets submitted as part of this Settlement are in compliance with Order No. 614. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000). However, the effective dates of the revisions to the 1991 Agreement must be extended by one additional day pursuant to section 205 of the FPA.⁴

¹ *See Vermont Transco, LLC*, 118 FERC ¶ 61,244 (2007), *reh'g granted in part*, 120 FERC ¶ 61,010 (2007).

² *Id.* P 1, 40.

³ Settlement at 2.

⁴ *Vermont Transco, LLC*, 118 FERC ¶ 61,244, at P 2-3, nn.4-5.

7. This order terminates Docket Nos. ER07-459-000, ER07-459-002, ER07-513-000, ER07-513-002, EL07-11-000 and EL07-11-002.

By the direction of the Commission. Commissioners Wellinghoff and Kelly dissenting in part with a joint separate statement attached.

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Vermont Transco LLC	Docket Nos. ER07-459-000 ER07-459-002
Vermont Electric Power Co.	Docket Nos. ER07-513-000 ER07-513-002
Lamoille County Systems v. Vermont Transco LLC Vermont Electric Power Co.	Docket Nos. EL07-11-000 EL07-11-002

(Issued August 22, 2008)

WELLINGHOFF and KELLY, Commissioners, dissenting in part:

The instant settlement states that the “public interest” standard of review will apply to “any filing at FERC that would have the effect of modifying or replacing the [1991 Agreement]” and which does not “have unanimous consent of all parties” to that agreement.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,¹ the Commission may not accept the standard of review set forth in the instant settlement. Therefore, the majority approves the settlement conditioned on the settling parties revising the standard of review applicable to non-settling third parties. The majority also states that language applying the “most stringent standard permissible under applicable law” to non-settling third parties would be “[a]n acceptable substitute provision.”

¹ 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

We continue to disagree with the majority's characterization of the D.C. Circuit's holding in *Maine PUC* as to the applicability of the "public interest" standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC*² and *Westar Energy, Inc.*,³ we respectfully dissent in part.

Jon Wellinghoff
Commissioner

Sudeen G. Kelly
Commissioner

² 123 FERC ¶ 61,201 (2008).

³ 123 FERC ¶ 61,252 (2008).